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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JUAN ESPARZA,

Plaintiff and Appellant,

v.

JOE MACPHERSON FORD,

Defendant and Respondent.

G055699

(Super. Ct. No. 30-2013-00685645)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Peter J. Wilson, Judge. Judgment reversed and remanded with directions. Motion to dismiss appeal and requests for judicial notice denied.

Anderson Law Firm and Martin W. Anderson for Plaintiff and Appellant.

Haynes and Boone, Mary-Christine Sungaila, Marco A. Pulido; Kolar & Associates, Elizabeth L. Kolar and Benjamin T. Runge for Defendant and Respondent.

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This is the second time this case has been before us. It arises out of the purchase by plaintiff and appellant Juan Esparza of an automobile from defendant and respondent Joe MacPherson Ford. In our first opinion (*Esparza v. Joe MacPherson Ford* (Apr. 28, 2017, G051901) [nonpub. opn.]; *Esparza I*), we reversed a judgment in favor of defendant and remanded to the superior court to enter judgment in plaintiff's favor rescinding the Retail Installment Sales Contract (RISC) based on defendant's failure to provide a copy of the sales contract in Spanish in violation of Civil Code section 1632 (all further statutory references are to this code unless otherwise stated).

On remand, the court denied plaintiff's motion for appellate attorney fees. Plaintiff appeals that decision, arguing he was entitled to attorney fees under section 2983.4 of the Automobile Sales Finance Act (§ 2981 et seq.; ASFA) and section 1717.

We agree plaintiff may recover appellate attorney fees under section 1717. We reverse and remand to the trial court to determine the proper amount of those fees. Because we decide the case on this basis we have no need to consider the alternative argument under ASFA and we express no opinion thereon.¹

We deny plaintiff's unopposed request for judicial notice of the Final Report of the Assembly Interim Committee on Finance and Insurance on Automobile Financing, volume 15, No. 24 of volume 1 of the appendix to the Journal of the Assembly (1961 Reg. Sess.) because the document is unnecessary to our decision. For the same reason, we also deny defendant's opposed request for judicial notice of Legislative History Materials of Assembly Bill 1160.

We deny defendant's motion to dismiss the appeal for lack of jurisdiction. Pursuant to Code of Civil Procedure sections 904.1, subdivision (a) and 906, on an appeal

¹ Plaintiff also argues lack of a prayer for attorney fees does not bar such an award. The court did not deny attorney fees on that basis, and defendant does not argue the point. Thus, we make no determination on this issue either.

from a final judgment we may review any intermediate ruling which substantially affects the rights of the party appealing from the judgment.

FACTS AND PROCEDURAL HISTORY

The facts underlying this action are fully set out in *Esparza I* and we do not repeat them here. (*Esparza I, supra*, G051901 at pp. 2-7.) On remand, plaintiff filed a motion for attorney fees on appeal pursuant to section 2983.4 of ASFA and section 1717.

Defendant opposed the motion, arguing the first amended complaint did not pray for attorney fees under sections 2983.4 or 1717, but only section 1794, part of the Song-Beverly Consumer Warranty Act (§ 1790 et seq.); plaintiff did not prevail on the ASFA claim; and the claim based on section 1632 was not an action on a contract, barring recovery under section 1717.

The court denied the motion. It ruled plaintiff did not prevail on a contract claim and thus section 1717 did not apply, and “the violation of section 1632, although a violation in which the contract at issue happened to be a Retail Installment Contract does not make the violation subject to . . . section 2983.4.”

A judgment was entered rescinding the contract between plaintiff and defendant and awarding restitution to plaintiff. No mention was made of the denial of appellate attorney fees. Plaintiff then filed a notice of appeal from the judgment and the minute order denying his motion for attorney fees.

Later, the court granted plaintiff’s motion for new trial and modified the judgment to award prejudgment interest. The court ruled plaintiff’s cause of action for rescission was “‘on the contract’ such that Plaintiff’s cause of action for violation of [section] 1632 is a contractually related claim.” “Rescission in the context of [section] 1632 and related claims can support an award of prejudgment interest under [section] 3287.”

DISCUSSION

1. Jurisdiction

Relying on the one final judgment rule, defendant argues we lack jurisdiction to hear this matter because the court has not yet decided whether plaintiff is entitled to attorney fees incurred in the trial court. We disagree. As noted above, plaintiff can appeal the prejudgment denial of his appellate attorney fees pursuant to Code of Civil Procedure sections 904.1, subdivision (a) and 906 as part of this appeal.

2. Attorney Fees Under Section 1717

Under section 1717, subdivision (a), “In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, . . . shall be entitled to reasonable attorney’s fees in addition to other costs.”

In this case, plaintiff sought and obtained rescission of the RISC for defendant’s failure to provide to him a Spanish translation as required by section 1632. (*Esparza I, supra*, G051901 at pp. 2, 11, 19.) The RISC stated: “IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES [¶] . . . [¶] [y]ou will pay our reasonable costs to collect what you owe, including attorney fees.”

“An action for rescission is an ‘action on a contract’ for purposes of an award of attorney fees and other costs under section 1717.” (*Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1152, fn. 6, disapproved of on another ground in *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1261.) “‘California courts liberally construe the term ““on a contract”” as used within section 1717. [Citation.] As long as the action “involve[s]” a contract it is “on [the] contract” within the meaning of section 1717.’” (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 894 (*Blickman*).)

We are not persuaded by the cases defendant cites to argue the claim was not on the contract. *Eden Township Healthcare Dist. v. Eden Medical Center* (2013) 220 Cal.App.4th 418, actually supports our ruling. It states a cause of action is ““on a contract”” under section 1717 if the cause of action ““involves” an agreement, in the sense that the action (or cause of action) arises out of, is based upon, or relates to an agreement by seeking to define or interpret its terms or to determine or enforce a party’s rights or duties under the agreement.”” (*Id.* at p. 427.) Here, plaintiff’s rescission claim related to the RISC and sought to determine plaintiff’s rights vis-à-vis the RISC, i.e., whether he was entitled to rescind the RISC and be reimbursed for the purchase price.

Likewise, although it is correct *Super 7 Motel Associates v. Wang* (1993) 16 Cal.App.4th 541 did state a claim in tort for damages for fraud was not on the contract, it also stated a cause of action seeking rescission based on fraud did sound in contract and supported an award of attorney fees. (*Id.* at p. 549.)

The decision in *Brown v. West Covina Toyota* (1994) 26 Cal.App.4th 555, 566 (disapproved of on another ground by *Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 996) cited by the trial court was not based on section 1717. *Hyduke’s Valley Motors v. Lobel Financial Corp.* (2010) 189 Cal.App.4th 430 is factually distinguishable. There, the plaintiff, a wholesale used car dealer, sold vehicles to a second dealer, which agreed to pay the plaintiff. The second dealer sold the vehicles to consumers using conditional sales contracts and then sold the contracts to the defendant finance companies. When the second dealer failed to pay the plaintiff, the plaintiff sued the defendant finance companies and prevailed. The plaintiff then sought attorney fees from the defendants based on a provision in the conditional sales contracts, claiming it was a third party beneficiary. The trial court denied the motion because the plaintiff was not a party to or assignee of the conditional sales contracts. The appellate court affirmed because the plaintiff did not sue on the conditional sales contracts that contained the attorney fees provision and there was no evidence the plaintiff was an intended

beneficiary. (*Hyduke's, supra*, 189 Cal.App.4th at pp. 435, 436.) No such facts exist here.

We also reject defendant's argument attorney fees are not recoverable because the rescission was based on a statutory obligation under section 1632 and not on an obligation under the RISC. Plaintiff's action "involved" the RISC. Thus, it was an action on the contract for purposes of section 1717. (*Blickman, supra*, 162 Cal.App.4th at p. 894.) Moreover, in allowing prejudgment interest, the trial court, ruled the rescission cause of action was "on the contract." This is consistent with our conclusion.

Therefore, plaintiff is entitled to attorney fees under section 1717.

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with directions to determine the amount of appellate attorney fees to award to plaintiff. Plaintiff is entitled to his costs on appeal.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.